

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Environmental Health Trust,	)	
Petitioners for Safe Cell Phones,	)	
Elizabeth Barris, and Theodora Scarato,	)	No. 20-1025
Petitioners	)	
	)	
v.	)	On Petition for Review of an
	)	Order of the Federal
Federal Communications Commission	)	Communications Commission
and United States of America	)	
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Children's Health Defense,	)	
Michele Hertz, Petra Brokken,	)	
Dr. David O. Carpenter, Dr. Paul Dart,	)	No. 20-1138
Dr. Toril H. Jelter, Dr. Ann Lee,	)	(Consolidated)
Virginia Farver, Jennifer Baran,	)	
Paul Stanley, M Ed.	)	On Petition for Review of an
Petitioners	)	Order of the Federal
	)	Communications Commission
	)	
v.	)	
	)	
Federal Communications Commission	)	
and United States of America	)	
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**MOTION FOR LEAVE TO  
PARTICIPATE IN ORAL ARGUMENT**

As requested in the Brief of Amicus Curiae Natural Resources Defense Council (NRDC) et al. filed on August 5, 2020, undersigned counsel respectfully moves herein for leave to participate in oral argument scheduled for January 25, 2021. Such motion is based upon the following:

1. The outcome of the above-captioned case directly affects the relief that NRDC obtained in a previous decision by this court. *See United Keetoowah Band of Cherokee Indians v. FCC*, 933 F.3d 728 (D.C. Cir. 2019). In *United Keetoowah*, NRDC successfully challenged a 2018 Order by the Federal Communications Commission (FCC) that had proposed to eliminate environmental and historic review for certain cell towers and other wireless infrastructure.

2. The action challenged by Petitioners in this case threatens to render such environmental review meaningless. Under the 2019 Order challenged by Petitioners, environmental review is tied to the Radio Frequency limits set by the FCC. As long as a wireless service provider certifies that the construction it proposes meets the FCC's RF standards, no environmental analysis is required. The FCC's arbitrary determination that the limits set in 1996 are still adequate today means that environmental review will not occur where it would otherwise if the FCC had followed the mandates of reasoned decision-making under the Administrative Procedure Act.

3. *Amicus curiae* NRDC *et al.* provide expertise relevant to the court's decision in the case not provided by Petitioners. For over 50 years, NRDC has participated in judicial and administrative proceedings regarding the implementation of the National Environmental Policy Act (NEPA). In addition, eighteen elected officials joined NRDC on its August 5, 2020, brief in support of

Petitioners. Such elected officials rely on NEPA to ensure that federal government decisions – such as the licensing of use of the spectrum to provide wireless services – are informed by the best available science and input from citizens affected by those decisions. If the FCC’s unlawful 2019 order stands, environmental review that should occur will not before new cell towers and other wireless infrastructure are constructed in communities across the country.

For the above reasons, undersigned counsel seeks 5 minutes of oral argument time on behalf of *amicus curiae* NRDC *et al.* in the above captioned case. Undersigned counsel has contacted counsel of record for all parties in the case. While the FCC and the United States do not agree to the representations above, Respondents do not take a position on NRDC’s request for time. Counsel for Petitioners EHT *et al.* also does not take a position on NRDC’s request for time. Counsel for Petitioners CHD *et al.* has not replied.

/s/ Sharon Buccino

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*Counsel for Amici Curiae,  
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Dated: December 17, 2020

### CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Motion for Leave to Participate in Oral Argument complies with the formatting and type-volume restrictions of the rules of the U.S. Court of Appeals for the District of Columbia Circuit. The motion was prepared in 14-point, double spaced, Times New Roman font, using the current version of Microsoft Word, in accordance with Fed. R. App. P. 32(a)(5) and Fed. R. App. P. 32(a)(6). The motion contains 437 words and therefore complies with Fed. R. App. P. 27(d)(2)(A).

### CERTIFICATE OF SERVICE

I hereby certify that on December 17, 2020, I electronically filed the forgoing document with the Court by using the CM/ECF system. All parties to the case have been served through the CM/ECF system.

/s/ Sharon Buccino